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5 Hon. Benjamin H. Settle

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

8 MARY E. BENTON, individually; LINDA J.  
MCPHERSON, individually; DORINDA M.  
9 OTERO, individually and collectively on  
behalf of all others similarly situated,

10 Plaintiffs,

11 v.

12 KAISER PERMANENTE, a business entity,  
exact form unknown; KAISER  
13 FOUNDATION HOSPITALS, a California  
corporation; KAISER FOUNDATION  
HEALTH PLAN, INC. D.B.A. KAISER  
14 FOUNDATION HEALTH PLAN, a  
California corporation KAISER  
15 FOUNDATION HEALTH PLAN OF THE  
NORTHWEST, an Oregon corporation;  
16 KAISER PERMANENTE HEALTH  
ALTERNATIVES, an Oregon corporation;  
17 NORTHWEST PERMANENTE, P.C., an  
Oregon professional corporation; ROE  
CORPORATIONS 1 through 100, inclusive.

18 Defendants.  
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NO. 3:13-cv-05998-BHS

**ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT,  
CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS AND  
APPROVING FORM AND  
MANNER OF NOTICE.**

20 Plaintiffs have filed a Motion for Conditional Certification of Proposed Settlement Class,  
21 Preliminary Approval of Class Action Settlement, Directing Notice, and Setting Hearing on Final  
22 Approval of Settlement ("Motion"). Having reviewed the Motion and supporting materials, the  
23 Court determines and orders as follows:  
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1           A.     The parties have agreed, subject to final approval by this Court following notice  
2 to the Class and a hearing, to settle this action, on the terms and conditions set forth in the  
3 Stipulation Re: Class Action Settlement Agreement and Release of Claims (the "Agreement").

4           B.     The Court has reviewed the Agreement, as well as the files, records, and  
5 Proceedings to date in this matter. The terms of the Agreement are hereby incorporated as though  
6 fully set forth in this Order. Capitalized terms shall have the meanings attributed to them  
7 in the Agreement.

8           C.     Based upon preliminary examination, it appears to the Court that the Agreement  
9 is fair, reasonable, and adequate; that the Class should be certified for settlement purposes; and  
10 that the Court should hold a hearing after notice to the Class to determine whether to enter a  
11 Settlement Approval Order and Final Judgment in this action, based upon that Agreement.

12                 Based upon the foregoing, **IT IS HEREBY ORDERED:**

13                 1. ***Preliminary Approval of Proposed Settlement.*** The Agreement, including all  
14 exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. The Court finds:  
15 (a) the Agreement resulted from extensive arm's-length negotiations, and (b) the Agreement is  
16 sufficient to warrant notice thereof to members of the Class and the Settlement Hearing  
17 described below.

18                 2. ***Class Certification for Settlement Purposes Only.*** Pursuant to Fed. R. Civ. P.  
19 23(b)(3), the Court, for settlement purposes only, conditionally certifies a class ("Class")  
20 consisting of:

21                         "All Kaiser patients for whom HIV tests were batch-ordered, and who were tested  
22 for HIV in Washington or Oregon, between and including April 16, 2013 and  
May 6, 2013."

23                 (a)     In connection with certification, the Court makes the following preliminary  
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1 findings:

- 2 (1) The Class satisfies Fed. R. Civ. P. 23(a)(1) because the Class appears to be  
3 so numerous that joinder of all members is impracticable;
- 4 (2) The Class satisfies Fed. R. Civ. P. 23(a)(2) because there appear to be  
5 questions of law or fact common to the Class;
- 6 (3) The Class satisfies Fed. R. Civ. P. 23(a)(3) because the claims of the  
7 representative plaintiffs appear to be typical of the claims being resolved  
8 through the proposed Settlement;
- 9 (4) The Class satisfies Fed. R. Civ. P. 23(a)(4) because the named plaintiffs  
10 appear to be capable of fairly and adequately protecting the interests of the  
11 above described Class in connection with the proposed Settlement and  
12 because counsel representing the Class are qualified, competent and  
13 capable of prosecuting this action on behalf of the Class.
- 14 (5) The Class satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because,  
15 for purposes of Settlement approval and administration, common  
16 questions of law and fact appear to predominate over questions affecting  
17 only individual Class Members and because settlement with the above-  
18 described Class appears to be superior to other available methods for the  
19 fair and efficient resolution of the claims of the Class. The Class appears  
20 to be sufficiently cohesive to warrant settlement by representation.

21 (b) In making the foregoing findings, the Court has exercised its discretion in  
22 conditionally certifying a settlement class.

23 (c) Mary E. Benton, Linda S. McPherson, Dorinda M. Otero, Barbara Kelley, and  
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1 William Pearse are hereby designated as Class Representatives.

2 3. **Class Counsel.** The Court appoints Stritmatter, Kessler, Whelan as counsel for  
3 the Class ("Class Counsel"). For purposes of these settlement approval proceedings, the Court  
4 finds that Class Counsel is competent and capable of exercising their responsibilities as Class  
5 Counsel

6 4. **Settlement Hearing.** The Parties have proposed a final approval hearing (the  
7 "Settlement Hearing") occur before this Court on September 8, 2015 or as soon thereafter as the  
8 Court may accommodate. The final approval hearing (the "Settlement Hearing") shall be held  
9 before this Court on September 14, 2015 at 11:00 a.m. as set forth in the Notice (described in  
10 Paragraph 5 below), to determine whether the Agreement is fair, reasonable and adequate and  
11 should be given final approval. Papers in support of final approval of the Agreement and for an  
12 award of attorneys' fees, costs, and expenses and for service awards to the Representative  
13 Plaintiffs (the "Fee and Expense Application") shall be filed with the Court according to the  
14 schedule set forth in Paragraphs 12-13, below. The Court may postpone, adjourn, or continue the  
15 Settlement Hearing by order of the Court, without further notice to the Class. After the  
16 Settlement Hearing, the Court may enter a Settlement Order and Final Judgment in accordance  
17 with the Agreement (the "Final Judgment"), which will adjudicate the rights of the Class  
18 Members with respect to the claims being settled.

19 5. **Notice.** The Court approves the form and content of the Notice, the Claim Form  
20 and Request for Exclusion, substantially in the forms attached as Exhibits B, C, and D to the  
21 Agreement. The Parties shall comply with the notice requirements described in the Agreement.  
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1           6.       ***Filing of CAFA Notice.*** Before the Settlement Hearing, Defendants shall file with  
2 the Court proof of its compliance with the notice provisions of the Class Action Fairness Act of  
3 2005 ("CAFA"), 28 U.S.C. § 1715.

4           7.       ***Disclosure of Protected Health Information:*** This Order shall be considered an  
5 order under 42 CFR § 164.512(e)(1)(i) authorizing the disclosure of the Protected Health  
6 Information of Class Members to the Claims Administrator maintaining active Business  
7 Associate Agreements with Defendants, pursuant to the Health Insurance Portability and  
8 Accountability Act of 1996(HIPAA). The Court also authorizes disclosure of the identity of  
9 Class Members who were tested for HIV, as required under ORS 433.045(4)(a), for the purpose  
10 of administering the Settlement.

11           8.       ***Findings Concerning Notice.*** The Court finds that the Notice and the manner of  
12 its dissemination described in the Agreement constitutes the best practicable notice under the  
13 circumstances and is reasonably calculated, under all the circumstances, to apprise Class  
14 Members of the pendency of this action, the terms of the Agreement and their right to object to  
15 or exclude themselves from the Class. The Court finds that the Notice is reasonable, that it  
16 constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it  
17 meets the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and any  
18 other applicable laws.

19           9.       ***Exclusion from Class.*** Each Class Member who wishes to exclude himself or  
20 herself from the Class and follows the procedures set forth in the Agreement shall be excluded.  
21 Any potential member of the Class may mail a Request for Exclusion, in the form  
22 specified in the Notice, to the Claims Administrator at the address set forth in the Notice.  
23 All persons who properly make requests for exclusion from the Class shall not be Settlement  
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1 Class Members and shall have no rights with respect to, nor be bound by, the Agreement, should  
2 it be approved. The names of all such excluded individuals shall be attached as an exhibit to any  
3 Final Judgment.

4 10. ***Right to Abrogate Agreement.*** In the event more than a previously-agreed  
5 number of Class Members timely exclude themselves from the Settlement Class, Defendants  
6 shall have the unilateral right to abrogate the Agreement by written notice of abrogation to Class  
7 Counsel in accordance with the Agreement. If Defendants exercise their right to abrogate the  
8 Agreement, then all aspects of the Agreement and the settlement underlying it, including but not  
9 limited to the provisional certification of the Settlement Class for settlement purposes, shall be  
10 null and void, and no aspect of the Agreement, the settlement, or this Order shall serve as legal  
11 precedent or as any basis for legal or factual argument in this or any other case.

12 11. ***Claims Procedures.*** The Court approves the claims procedures set forth in the  
13 Agreement. The Court approves the form and content of the Claim Form substantially in the  
14 form attached as Exhibit C to the Agreement. A properly executed Claim Form must be  
15 submitted as required in the Notice no later than the expiration of the Claims Period, as defined  
16 in the Agreement. Each Claim Form shall be deemed to have been submitted when postmarked.  
17 Any Claim Form submitted in any other manner shall be deemed to have been submitted when it  
18 was actually received at the address designated on the Claim Form.

19 12. ***Objections, Appearances, and Final Papers.***

20 (a) ***Written Objections.*** Any Class Member who has not timely submitted a  
21 written request for exclusion from the Class, and thus is a Class Member, may object to the  
22 fairness, reasonableness or adequacy of the Agreement, or the Fee and Expense Application.  
23 Any class member who wishes to object to the Settlement, must submit his or her objection in  
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1 writing to Class Counsel, postmarked no later than May 14, 2015. Class Counsel will file copies  
2 with the Court via ECF. Objecting Class Members must include their name and address, the  
3 name and number of the case, and a statement of the reasons why they (i) believe the Court  
4 should find that the proposed settlement is not in the best interests of the Class, or (ii) object to  
5 the Fee and Expense Application. Any objection not timely made shall be forever barred.

6 (b) ***Appearance at Settlement Hearing.*** Any objecting Class Member who  
7 wishes to address the Court at the Settlement Hearing must indicate his or her intent to do so in  
8 writing to Class Counsel at the same time that the Class Member submits the objection. Class  
9 Counsel will inform the Court and Defendants' lawyers accordingly. Any Class Member who  
10 does not timely deliver a written objection and notice of intention to appear in accordance with  
11 the requirements of this Order, shall not be permitted to object or appear at the Settlement  
12 Hearing, except for good cause shown, and shall be bound by all proceedings, orders and  
13 judgments of the Court.

14 (c) ***Papers for Final Approval and for Fees and Expenses.*** Representative  
15 Plaintiffs shall file their motion for final approval of the Settlement, and Class Counsel shall file  
16 their motion for fees and expenses, together with all supporting documentation, by no later than  
17 45 days after the expiration of the Claims Period, as defined in the Agreement.

18 (d) ***Responses to Objections.*** Any responses to objections to the Agreement  
19 or the Fee and Expense Application shall be filed with the Court on or before September 7, 2015  
20 from entry of this Order.

21 13. ***Dates of Performance.*** In summary, the dates of performance are as follows:

22 (a) Notice shall be sent to potential Class Members on or before  
23 March 30, 2015.  
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- 1 (b) Class Members who desire to be excluded shall mail requests for exclusion  
2 postmarked by May 14, 2015.
- 3 (c) Class Members who desire to submit Claim Forms shall do so by  
4 May 14, 2015;
- 5 (d) All objections to the Agreement or the Fee and Expense Application shall  
6 be filed and served by May 14, 2015;
- 7 (e) Representative Plaintiffs' final approval motion, Class Counsel's fee and  
8 expense motion, and all supporting materials, shall be filed no later than  
9 August 10, 2015;
- 10 (f) Responses to objections, if any, and in further support of the Fee and  
11 Expense Application, shall be filed by September 7, 2015;
- 12 (g) The Settlement Hearing shall be held on September 14, 2015 at 11:00 a.m.; and
- 13 14. ***Effect of Failure to Approve the Agreement.*** In the event the Court does not  
14 approve the Agreement, or for any reason the parties fail to obtain a Final Judgment as  
15 contemplated in the Agreement or the Agreement is terminated pursuant to its terms for any  
16 reason, then the following shall apply:
- 17 (a) All orders and findings entered in connection with the Agreement shall become  
18 null and void and have no further force and effect, shall not be used or referred to for any  
19 purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
- 20 (b) The conditional certification of the Class pursuant to this Order shall be vacated  
21 automatically, and the case shall return to its status as it existed prior to entry of this  
22 Order;
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1 (c) Nothing contained in this Order is, or may be construed as, any admission or  
2 concession by or against Defendants or Representative Plaintiffs on any point of fact or law; and

3 (d) Nothing in this Order or pertaining to the Agreement shall be used as evidence in any  
4 further proceeding in this case.

5 15. ***Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable steps  
6 in connection with approval and administration of the Settlement not materially inconsistent with  
7 this Order or the Agreement, including, without further approval of the Court, making minor  
8 changes to the content of the Notice that they jointly deem reasonable or necessary.

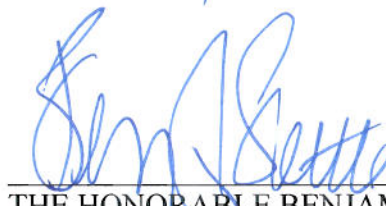
9 16. ***Stay of Proceedings Pending Approval of the Settlement.*** All proceedings before  
10 the Court are stayed pending final approval of the Settlement, except as may be necessary to  
11 implement the Settlement or comply with the terms of the Agreement.

12 17. ***Injunction against Asserting Released Claims Pending Settlement Approval.***  
13 Pending final determination of whether the settlement should be approved, Plaintiffs, all  
14 Class Members and any person or entity allegedly acting on behalf of Class Members, either  
15 directly, representatively or in any other capacity, are preliminarily enjoined from commencing  
16 or prosecuting against the Released Parties any action or proceeding in any court or tribunal  
17 asserting any of the Released Claims, provided, however, that this injunction shall not apply to  
18 individual claims of any Class Members who timely exclude themselves in a manner that  
19 complies with this Order. This injunction is necessary to protect and effectuate the Settlement,  
20 this Order, and the Court's flexibility and authority to effectuate this settlement and to enter  
21 judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its  
22 judgments pursuant to 28 U.S.C. § 1651(a).

1           18.    ***Reservation of Rights and Retention of Jurisdiction.*** The Court reserves the right  
2 to adjourn or continue the date of the Settlement Hearing without further notice to Class  
3 Members, and retains jurisdiction to consider all further applications arising out of or connected  
4 with the settlement. The Court may approve or modify the settlement without further notice to  
5 Class Members.

6                   DATED this 26 day of February 2015

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THE HONORABLE BENJAMIN H. SETTLE  
UNITED STATES DISTRICT JUDGE

Presented by:

STRITMATTER KESSLER WHELAN

By: /s/ R. Travis Jameson  
Paul Stritmatter, WSBA#4532  
Brad Moore, WSBA#21802  
R. Travis Jameson, WSBA#45715  
Counsel for Plaintiffs